

Second Supplement to Memorandum 96-76

**Judicial Review of Agency Action:
More Comments on Tentative Recommendation**

Attached is a letter from Louis Green for the County Counsel's Association of California and the California State Association of Counties, discussed below.

§ 1123.630. Notice to parties of last day to file petition for review

Mr. Green asks that we preserve special provisions requiring notice to begin the running of the applicable limitations period, including those under the California Environmental Quality Act. Section 1121.110 of the draft statute does this: "A statute applicable to a particular entity or a particular agency action prevails over a conflicting or inconsistent provision of this title." This raises the policy question whether both the notice required by the draft statute and these special statutes should be required, or whether the notice required by the special statutes should be the only notice.

The draft statute requires the agency to give the following notice to the parties: "The last day to file a petition with a court for review of the decision is [date] unless the time is extended as provided by law." Special provisions require the following notices:

— For an administratively-issued withholding order for taxes, the state must serve "a notice informing the taxpayer of the effect of the order and of his right to hearings and remedies provided in this chapter." The taxpayer must seek judicial review within 90 days of the notice. Code Civ. Proc. § 706.075.

— For an assessment due from a producer under a commodity marketing program, the Director of Food and Agriculture may file a certificate with the court showing the amount due, and must give notice of the filing to the debtor. Judicial review must be sought within 30 days. Food & Agric. Code §§ 59234.5, 60016.

— For denial by a county of disability retirement, the county board of retirement must give notice of the denial to the employer. The employer may seek judicial review within 30 days of the notice. Gov't Code § 31725.

— When a state or local agency approves a project subject to the California Environmental Quality Act, the agency must file notice of the approval with the Office of Planning and Research. Pub. Res. Code §§ 21108 (state agency), 21152 (local agency). This commences the running of some of the applicable limitations periods. See Pub. Res. Code § 21167.

It would further the Commission's goal of having the notice inform the affected person of the last calendar date to petition for judicial review to require both the notice in the draft statute and the notice required by the applicable special statute. **The staff recommends making this clear by adding the following to Section 1123.630:**

1123.630. In addition to any notice of agency action required by statute, in an adjudicative proceeding, the agency shall in the decision or otherwise give notice to the parties in substantially the following form: "The last day to file a petition with a court for review of the decision is [date] unless the time is extended as provided by law."

Comment. . . . The introductory clause of Section 1123.630 makes clear that the section does not override special provisions requiring notice to commence the running of the applicable limitations period, such as for judicial review of an administratively-issued withholding order for taxes (Code Civ. Proc. § 706.075), for an assessment due from a producer under a commodity marketing program (Food & Agric. Code §§ 59234.5, 60016), for denial by a county of disability retirement (Gov't Code § 31725), and under the California Environmental Quality Act (Pub. Res. Code §§ 21108 (state agency), 21152 (local agency)). See Section 1121.110 (conflicting or inconsistent statute controls).

We would also add language to the special statutes to make clear that, if the two required notices are given separately, the applicable limitations period runs from the later of these.

§ 1123.650. Time for filing petition for review in other adjudicative proceedings

Similarly, Mr. Green asks that we preserve special limitation periods for various local agency proceedings. The Comment to Section 1123.640 says Section 1121.110 (conflicting or inconsistent statute controls) does this, but **it would be clearer to add the following language to Government Code Sections 51286, 65009, 66639, and 66641.7, and Public Resources Code Section 21167:**

Notwithstanding Section 1123.640 of the Code of Civil Procedure, [the applicable limitations period is, etc.]

In addition, the following material in the Comment to Section 1123.640 should go more appropriately in the Comment to Section 1123.650:

Section 1123.650 does not override special limitations periods applicable to particular proceedings, such as for cancellation by a city or county of a contract limiting use of agricultural land under the Williamson Act (Gov't Code § 51286), California Environmental Quality Act (Pub. Res. Code § 21167), decision of a local legislative body adopting or amending a general or specific plan, regulation attached to a specific plan, or development agreement (Gov't Code § 65009), or a cease and desist order of the San Francisco Bay Conservation and Development Commission and complaint by BCDC for administrative civil liability (Gov't Code §§ 66639, 66641.7). See Section 1121.110 (conflicting or inconsistent statute controls).

Application of Statute: PUC Regulation of Highway Carriers

Assembly Bill 1683 transfers regulation of most highway property carriers from the PUC to the Department of Motor Vehicles and California Highway Patrol, leaving with the PUC only charter party carriers, passenger stage corporations, and household goods carriers. Under Senate Bill 1322, recently signed by the Governor, judicial review of these PUC matters will remain in the California Supreme Court. At the September meeting, the Commission asked the staff to consider whether the Public Utilities Code should be amended to provide that these proceedings be reviewed in the court of appeal, possibly a single court of appeal. **The staff would not do this in the draft statute.** Having exempted the PUC from the draft statute, the staff would leave to the regulated carriers and PUC the question of to what extent the new provisions in SB 1322 should be further amended.

Respectfully submitted,

Robert J. Murphy
Staff Counsel

EXHIBIT
EL DORADO COUNTY
OFFICE OF
THE COUNTY COUNSEL

COUNTY COUNSEL
LOUIS B. GREEN

CHIEF ASS'T. COUNTY COUNSEL
EDWARD L. KNAPP

DEPUTY COUNTY COUNSEL
CHENE J. VALLEJUNGA
THOMAS R. PARKER
VIGOR J. PINOCHANE
THOMAS D. CUMPTON
JUDITH M. KERR
PATRICIA E. BECK
CAROLYN N. PHILLIPS

COUNTY GOVERNMENT CENTER
330 FAIR LANE
PLACERVILLE, CALIFORNIA 95667
(916) 621-5770
FAX/F (916) 621-2037

Legal Assistants
RUDY LIMON
JOHN F. MARTIN

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Law Revision Commission
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File: _____

VIA FACSIMILE: (415) 494-1827 and U.S. MAIL
California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-1827

Re: Judicial Review of Local Agency Action

Honorable Chairman and Commission Members:

I am writing on behalf of the County Counsels' Association of California and the California State Association of Counties to provide input on just a few additional points of concern regarding the above-referenced item. By letter dated October 7, 1996, we expressed our concerns regarding the fundamental issue of whether the proposal should apply to legislative actions of local agencies. I am certain individual counties may have additional concerns regarding specific aspects of the proposed legislation based upon the nature of the administrative proceedings which predominate in a particular jurisdiction. However, the following two related procedural issues have been universally identified as concerns among those consulted.

Section 1123.650 of the proposed legislation appears to provide a ninety (90) day statute of limitations on actions challenging administrative determinations other than those by state agencies or local actions pursuant to the Administrative Procedures Act¹. Thus, as we read this section, a ninety day statute of limitations would apply to actions such as approval or denial of administrative land use approvals, such as use permits and subdivision maps. In certain cases, this is at odds with existing law such as the California Environmental Quality Act which provides a thirty (30) day statute of limitations in many cases. We most strongly urge the Commission to modify Section 1123.650 to preserve existing statutes of limitations which are shorter than the ninety day statute of limitations provided by that section.

¹Such actions would be subject to a thirty (30) day statute of limitations pursuant to Section 1123.640.

Unlike many adjudicatory proceedings at the state level which involve licensing or other approvals unique to the applicant or parties to the proceeding, local land use proceedings, although often administrative in nature, involve both the specific rights of an applicant and broad issues of public concern. It is as likely, if not more so, that legal challenges to land use actions are brought by members of the public opposing such action rather than by the applicant. This leaves a project applicant and the agency approving the project in a state of uncertainty until expiration of any applicable statute of limitations, as opposed to having control over the initiation of litigation. These factors are taken into account by existing enabling legislation in many areas, such as CEQA, which provide specific and often short time periods for challenging an administrative action. Because these statutes of limitation have been carefully crafted to balance the various interests involved, we urge the retention of such limitations and the application of Section 1123.650 only as an "outside" limitation where other statutes of limitation exist.

On a related matter, Section 1123.650 provides that the statute of limitations runs from the giving of notice provided under Section 1123.630. Various organic statutes already provide for the manner in which notice is to be given to trigger the applicable statutes of limitation. For example, under CEQA filing of a Notice of Determination on a project is required to start the statute running. Sections 1123.630 and 1123.650 should be modified to provide that the notice provisions are alternatives applicable only when notice of decisions are not otherwise provided by statute.

Again, thank you for your consideration and courtesy.

Very truly yours,

Louis B. Green
County Counsel

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